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## “LAND STEALING IN NEW MEXICO.”

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### A REJOINDER.

IN the NORTH AMERICAN REVIEW for July George W. Julian, now a United States Surveyor-General, under the caption of “Land Stealing in New Mexico,” attempts to make a severe arraignment of the past administration of the General Land Office in connection with the affairs of that territory. His charges of corrupt practices, and of mal-administration generally, cover a period of twenty-five years, and, by implication, go back to almost the entire period of our occupancy. In doing so, Mr. Julian assails, by name, well-known citizens of that territory, and charges them with being robbers of the public lands. They are represented as suborners of perjury, corruptors of public officials and courts, demoralizers of the territorial press and politics, and, in general, as the creators and maintainers of an infamous system of plunder and wrong doing. The author of this wholesale diatribe is a most picturesque and unique character. His counterpart it will be difficult to find in any country; certainly not in ours. Mr. Julian himself has often been charged with being a corruptionist of the worst order. These charges have had much more apparent foundation than those he makes against others. He was Chairman for several years of the Committee on Public Lands, in the House of Representatives. During that time bills covering more than half of all the land granted to railroads in the United States were favorably reported by that committee, and passed Congress as a result of such report. The Public Lands Committee voted away, under Mr. Julian’s chairmanship, a larger area to railroad corporations than would cover all the New England and half the Middle States. The land thus given away was the most fertile in the country. Whether that was corruptly done or

for the public interests, it is not worth while now to discuss, but that Mr. Julian, more than any one else, is responsible for it, is a thing the public ought to know in view of his recent astounding freak of virtue. . It was Mr. Julian, also, who insisted on, and persisted in, compelling the settlers on the reserved sections within the limits of railroad grants to pay \$2.50 per acre for their lands, when the House of Representatives was disposed to let the cost thereof remain at the ordinary pre-emption price of \$1.25 per acre. He thus added more than two hundred millions of dollars to the burden of the settlers who sought homes along the proposed lines of the railways. The same law necessarily increased the value of lands granted to the railroads two hundred millions of dollars. The railroad lobby won.

It should also be remembered, that with the exception of the Pacific Railroads, and they only in part, these land grants, for the favorable reports on which Mr. Julian is chiefly responsible, were not given in the arid regions of the West. They did not cover the sage brush, the cactus, and the sand hill country. They were taken from the splendid lands of Illinois, Iowa, Minnesota, Northern Michigan, Wisconsin, Eastern Kansas, Dakota and the Southern States of Mississippi, Arkansas, Florida and Louisiana. Every acre was worth more than thirty acres within the arid region. If there has been a land grabber in this country, a man who has done more than any other man to prevent the settlers from exercising their rights under the homestead and pre-emption laws, Mr. Julian is that man. Whether all of this was done honestly in the public interest or not, it was done by the present Surveyor-General of New Mexico. On the whole, I think, that the railroad land grants were for the best interests of the whole country, but no more so than were the grants given by the Spanish and Mexican governments of large tracts in New Mexico, Arizona, and California, to induce colonization in some cases, and to reward eminent public services in others. At the time they were given, they were regarded by their respective governments as worthless. Many of them are practically worthless yet.

Mr. Julian himself deserves some attention. Nearly fifty years ago he was first elected to office as a pro-slavery Democrat. Defeated for re-election he left his party. After a short time he posed as a Free Soil leader, and was elected on anti-slavery issues. When again retired to private life he became a conservative Whig.

Again he was unsuccessful and returned to the more promising field of political abolition. Being practically alone in his own locality, he thereafter reigned supreme. When the war broke out he was one of the few able-bodied men who bravely remained at home. The late Adjutant-General Thomas, of the United States Army, said of him : " He (Julian) is the only member of Congress who has ever visited my office to injure an officer in the field." During the war period and for some subsequent years, Mr. Julian was in Congress as a Republican. He was a zealot of zealots ; a destructionist and radical of the bitterest type, as against the Southern States and their people. But, as usual, he quarreled, and this time with Senator Oliver P. Morton, a man who could deal properly with such a character. The Republican party suddenly became too corrupt for Julian. The people of Indiana at the time did not concur in his estimate of either Senator Morton or of the party of which the Senator was so sagacious a leader. The "Reformer" was not returned to Congress. Since then there has been no denunciation too bitter against the Republican party for him to make, and no accusation too vile for his tongue or pen to express against men who have been in anywise prominent in its ranks. In his eye there was no public crime of which Ulysses S. Grant was not guilty. He denounced General Garfield to my personal knowledge at every cross-road in Indiana, as a "thief," a "bribe taker," a "bribe giver," and a "perjurer." He used these exact words in characterization of that lamented man, within my hearing. If the testimony of his neighbors can be relied upon, no man has ever used Federal patronage for more selfish purposes. Can it be doubted then that he has earned his present position ? Mr. Cleveland, evidently, knew this man when it was desirable to raise the issue of "land jobbery" and "corruption" in New Mexico, but he may possibly have forgotten the letter which Mr. Julian wrote to Henry Villard, desiring to be employed as a lobbyist for the Northern Pacific Railroad, which afterwards came to light through Carl Schurz. Mr. Villard declined his services.

Mr. Julian declares in the very first paragraph of the article I am discussing, that President Cleveland asked him, in May, 1885, to accept the office of either Governor or Surveyor-General of New Mexico, that he might "co-operate" with him, the President, "in breaking up the rings of that territory."

Understanding that the Surveyor-General's office was "the more important," he finally accepted the same, and on the 22d of July, 1885, entered on its duties. Of course he did, but Mr. Julian would have us believe that he doubted the propriety and hesitated before accepting the President's offer. However, he went to New Mexico, not as a judge, but as a pre-determined accuser. His mission was not to develop the truth, but to establish the existence of "rings." After two years of industrious efforts he has failed to prove any one of his allegations, or to sustain in the courts, aided by the powers and appliances of the General Government, a single accusation. Mr. Julien has barred himself at the outset out of the court of public opinion. He assumes that the legislation of 1854, under which the incumbents of his present office are given such "large and responsible powers," and in the administration of which, as he charges, they have all proven themselves to have been corrupt, was in itself "wise and salutary" in character, when "properly administered." That is, of course, when the Julians are in power. As a matter of fact, the land grant legislation of 1854 was, at its best, merely tentative in character. Mr. Julian illustrates this himself, when in his wholesale, unwarranted, and sweeping attack upon all his predecessors, he declares that the "meagre salary" could not secure the services of "competent and fit men," and that "official life in an old Mexican province, and in the midst of an alien race, offered few attractions to men of ambition and force." Again, the position of Surveyor-General pre-supposed "judicial training and an adequate knowledge of both Spanish and American law," while, according to him, most of his predecessors have possessed no such requirements. This, however, is a mere assumption on his part. The real difficulty with the act of 1854 and of all subsequent legislation is, that it deals with the public lands in the arid region as well as the Mexican land grant system, without due regard to the physical phenomena of climate and topography.

All who are familiar with Mexican land grants know that in describing boundary lines the grantor, as well as the grantee, were alike unfamiliar with the distances between the several landmarks named in the concessions. For example: A grant would begin by describing the summit of a certain mountain named as a starting point, running thence to a river, also named; from there

to the dividing line of drainage between two rivers described ; then possibly to some other mountain and back to the place of beginning. It is undoubtedly true that neither party had the remotest idea of the area of land lying within these natural landmarks. That was only arrived at when the surveys were finally made, perhaps a century afterward. In some cases it was found that a grant covered four or five times the number of acres of land that the owner supposed to belong to him. The natural landmarks were indicated in the concession, and the courts, as well as Congress, held that the grant must confirm according to the description therein set forth. In this connection it is a notable fact that Mr. Julian omitted to say that with a very few exceptions every land grant in New Mexico was confirmed prior to 1861. He alludes especially to the Maxwell grant, which, I believe with him, was never intended when made to cover the extent of territory that is now claimed as included within its borders. That grant, however, like many others, was made before the country was occupied, and the natural landmarks were named in the concession. It was reported favorably by a Democratic Surveyor-General. It was approved by Jacob Thompson, who was Democratic Secretary of the Interior. It was confirmed by a Democratic Congress, and the confirmatory act was approved by Mr. Buchanan, a Democratic President. The other grants confirmed in New Mexico, as I have stated, passed through the same partisan hands, from the Surveyor-General to the President. Mr. Julian cannot point to a single grant confirmed by a Republican Congress that will not stand the closest scrutiny. As to the *Una de Gata* grant, to which he alludes, in his unwarranted use of my name, it had been approved by the Surveyor-General and the Secretary of the Interior. It had also passed the lower House of Congress. Eleven years ago I proposed to buy this grant. Upon investigating the title I became satisfied that it was fraudulent. I wrote to the Hon. Carl Schurz, then Secretary of the Interior, stating circumstantially all the facts in my possession regarding the grant. I asked him to send a special agent to make a careful investigation, at the same time turning over to him all the papers in my possession. Upon such investigation, it appeared that the grant was a forgery, and that the forger, one Gomez, was then in the penitentiary for forging other grants in California. I then

applied to the Honorable Secretary to have the land within the bounds of the so-called grant thrown open for settlement. This was done. It is now occupied by a body of as good citizens as there are in the United States, whose improvements within the lines of this so-called grant are extensive and valuable. All of these facts were and are accessible to my accuser, as my letters and papers are on file in the Interior Department. There is not the slightest foundation for the charge that I seized upon the "choicest land" in this neighborhood or sent my "henchmen" to occupy it. I built my home there nine years before Mr. Julian came into the country. He has never been within twenty-five miles of my place, and I do not believe that he has the slightest knowledge, direct or indirect, respecting a single acre of the land I own. As a matter of fact I am among the smaller owners of land in New Mexico, and I have paid more money than the same number of acres would cost in Iowa. And yet, he gravely accuses me before the country.

To show how easy it is to make such charges, and how difficult it is to prove them, I will state that mainly through Mr. Julian's exertions, nearly four hundred citizens of New Mexico have been indicted on charges similar to those made in the July number of the REVIEW. Yet up to this time, every man tried has been acquitted. There is not a grain or a shadow of truth that there have been or are now frauds committed to any extent in New Mexico under the homestead and pre-emption laws. Citizens of the United States are entitled to take one hundred and sixty acres of land as pre-emptors and pay for it within the time designated by law, after fulfilling certain requirements, at the rate of \$1.25 per acre. The person entering this land must swear that he is doing it for his own use and benefit, and not with the view of selling it. Before the title passes to the pre-emptor, he pays the Government the price for the land. The Government is not defrauded, so far as that is concerned. Now, the question is, whether after this pre-emption the person entering the land has the right to sell it to another. That issue has been settled a hundred times in almost every court in the Union. The only possible fraud that can be charged is that the man sold his land instead of living upon it, and that would not be a fraud against the Government, because the Government has received its full pay.

The July article carries with it the implication that between

1861 and 1885 every incumbent of the Secretaryship of the Interior, of the Commissionership of the General Land Office, and of the Surveyor-Generalship of New Mexico has been a corrupt and dishonest man. It also accuses Congress by the wholesale.

No one of these grants has passed Congress since I exposed the fraudulent nature of the grant with which Mr. Julian attempts to link my name unfavorably. Does any one, whether Republican or Democrat, seriously believe that men like Caleb Smith, J. P. Usher, O. W. Browning, J. D. Cox, Columbus Delano, Zachariah Chandler, Carl Schurz, Samuel J. Kirkwood, and Henry M. Teller, each of whom, since 1861, has served as Secretary of the Interior are of the dishonest mold Mr. Julian has represented them to be? Such accusations will not stand against the several incumbents of the Commissionership of the General Land Office.

These men are all well known, and where they are known no one has ever even suspected them of dishonesty. More capable, more thoroughly upright, and more deserving men never discharged a public trust.

James M. Edmonds, of Michigan, who was the head of the Union League of America during the whole war period, and the friend and confidant of Senator Chandler up to the time of his death, was appointed Commissioner of the General Land Office by President Lincoln. Following him was John Wilson, who had faithfully served thirty-five years in different capacities in the General Land Office. Then Judge Drummond, General Burdette, General Williamson, and Mr. McFarland cover the list.

Mr. Julian is nothing if not sweeping. He virtually declares that his predecessors as Surveyor-Generals have all been thieves, and have conspired with public robbers to defraud the United States. He alleges, also, that many Senators and Representatives now holding seats from Western States have a hand in the general conspiracy. Not content, he winds up by alleging, in almost definite terms, that the Supreme Court of the United States has joined hands with his phantom army of plunderers to defraud the Government and the people of the lands covering the barren plains and desolate mountains of the Southwest. The assumption is monstrous. The presumption is that he has allowed his imagination to reach far beyond any possible or remote fact, or else that he is proceeding, for partisan and personal ends, to deliberately



misrepresent and malign men, "the latchet of whose shoes he is not worthy to unloose."

I turn from the consideration of these wild accusations of a common scold to the remedy offered as a cure for the obstacles to settlement and progress which the uncertainty of the land titles has created in New Mexico, and also in Arizona. It is the only issue of importance to be found in his article. The fatal error has been made in dealing with the arid region, largely which is, at its best, mere grazing land, as if it was of the same character, condition, and capacity as the purely agricultural domain of the country.

A certain remedy is proposed, and the critic considers others that have heretofore been presented. He demands a speedy settlement of land titles; but how does he seek to achieve this? In his opinion, Congress "is unfitted for such service." Mr. Julian opposes the establishment of a land commission, because in the case of California, after thirty-six years labor, and the disposal of hundreds of intricate cases, there are about forty claims yet unsettled. Mr. Julian also opposes the bill of Senator Edmunds. That measure provides that the United States District Court, within the territory, shall adjudicate all land claims. The right of appeal within six months to the Supreme Court of the territory is given, and from that within twelve months to the United States Supreme Court. In all cases where the judgment is against the United States, an appeal must be taken, unless the Attorney-General otherwise directs. This measure is regarded as good for lawyers but bad for litigants. Having thus put aside all the present proposed methods, what does Mr. Julian suggest as a substitute? Nothing more than "a single enactment of Congress referring all these cases to the Secretary of the Interior for final decision." This lame and impotent conclusion is a fitting finale to a paper which sets out with the assertion that a law which has done nothing but prove itself worse than inoperative, contains provisions that are "wise and salutary" if properly administered.

The head of the Department of the Interior is one of the most overloaded of public officers connected with the general government. He has nearly a score of the most important bureaus connected with any department, embracing the Public Lands, Indians, Patents, Agriculture, Pensions, Pacific Railways, and Geological Survey; the Bureaus of Labor and Education, the

National Museum, the Public Institutions, and Government of the District of Columbia, besides other minor duties and affairs. He is the supervisory officer and reviewing authority in all matters that arise in this varied assortment of public duties. As a matter of fact, the Secretary of the Interior is now charged with the very duty that Mr. Julian proposes to reimpose. It is the Secretary of the Interior who transmits the Surveyor-General's reports to Congress, through the President, with his approval or disapproval duly attached. This reviewing is the work of a sub-law clerk. The Secretary may examine a case himself, but it is improbable. He will at most look over a brief prepared for him by the aforesaid law clerk, checked possibly by a reference to one of the two Assistant Secretaries, or to the Assistant Attorney-General of the United States, assigned to the department of the Interior. All of these things have been done ever since 1854, and, if our critic be correct, have produced nothing but confusion, collusion, contention, and corruption. The proposition is, however, a logical one for Mr. Julian. The Secretary under whom he serves is alone to be trusted. He alone is honest and incorruptible. Granted ! Yet he could not dispose of the New Mexico land grant cases if he devoted all of the official time that remains of his term of service to their consideration. And who shall guarantee to Mr. Julian that Mr. Lamar will be able to transmit the especial qualifications with which his subordinate endows him to his successor ? His remedy is simply ridiculous. It would only render corruption easier by concentrating it on the poorly paid clerks, who would really do the reviewing and practically prepare the decisions. As the accusations are thus shown to be baseless, and the remedy offered for admitted evils is unquestionably absurd, I venture to present some suggestions as to the proper mode of adjudicating land grant claims in the Southwest.

First. There should be appointed with ample powers a special court or commission, large enough to be subdivided, the full body to have appellate jurisdiction.

Second. All claims brought before this tribunal should be limited as to period. I suggest three years from the date of organizing the court for filing ; and not more than five years for the completion of adjudication.

Third. This tribunal should be required to take up at once

and decide within one year all cases wherein charges now rest upon confirmed or patented grants.

Fourth. The decision of this tribunal, when averse to a claimant, should be a mandate to the Secretary of the Interior for the ordering of an immediate survey, and the opening of the land to general settlement.

Fifth. Power to be given for a full examination of all records—American, Spanish, or Mexican.

With this tribunal having such powers, and with the limit in time, I venture to say that there would be at once achieved a larger degree of prosperity to New Mexico than Mr. Julian can possibly conceive of or express.

This land-grant question is, however, but part of a much larger one, and that embraces the proper disposition which shall, under law, be made of the lands of the arid region. They are useful chiefly for grazing or mining purposes. Lying beyond the one hundred and second meridian of west longitude and west to the Pacific Ocean, is a region that requires a different system of disposal and settlement than the country lying east of the meridian named.

Nothing is more idle than the talk that can be heard on all sides respecting the rain-fall increasing within what is known as the arid region. It is stated, with great earnestness and apparent conviction, that Kansas and Nebraska were at one time included in what was erroneously known as the great American desert, but that now the larger part of both of these States is covered with fertile farms. It must be remembered that as far back as 1847 the rain-fall has been accurately recorded at Fort Riley, Kansas; Fort Bent, Colorado; Santa Fe, New Mexico; Fort Bridger, Wyoming; Salt Lake City, Utah; and at several points on the Pacific Coast. These records show that the rain-fall from 1850 to 1860 was two inches more than from 1870 to 1880, and that the average rain-fall west of the one hundred and second meridian, not including Oregon and Washington Territory, is under fourteen inches per annum. There has been no increase whatever in the past forty years. The present year has been an exceptional one in a portion of these territories. The rain-fall of New Mexico is likely this year to reach twenty inches, while last year it was only fourteen, and in 1880 was only nine; at the same time even the Mississippi Valley States have suffered.

The talk about opening up such a country, a plateau as extensive and much more broken than that of Central Asia, for ordinary farming, is only suggested by those who have no knowledge of the facts or physical structure of the region. Its water-courses are scant indeed, and the evaporation in some parts of the Southwest is simply enormous. Even in fairly protected reservoirs, with cement sides and bottoms, where leakage is impossible, the evaporation will reach thirteen feet. During the summer the wind blows continually from the southwest, passing over vast plains of heated sand and barren treeless mountains, absorbing every particle of moisture the scant precipitation provides. A large portion of arable land of New Mexico has been under cultivation for more than three hundred years. Still the fields must be irrigated now the same as they were three centuries ago. While it is true that but a small part of the water in the Rio Grande and other large streams has been diverted to the use of agriculture, and that there is room in New Mexico for a large farming population, the construction of canals for that purpose will require a capital far beyond the ability of the ordinary farmer to command.

Under our present land laws, the practice is absurd which legally permits the occupation, settlement, and purchase of only 160 acres within the arid region. No progress can ever be made therein. Where the precipitation is not equal to industrial uses, there can be no farming without irrigation. All authorities place the agricultural rain-fall at not less twenty-eight inches per annum. West of the one hundred and second meridian, the precipitation will seldom, even in favored but limited localities, exceed twenty inches, while the average will barely reach fourteen inches. The greater portion of the arid region is a mountain plateau rising from four thousand to six thousand feet above sea level. Ordinary farming is simply impossible. Grazing, even, is available only when the springs, water-holes, and infrequent streams, often sinking in sand or the detritus made by constant erosion, are carefully conserved. The water sources and supplies control the use of land within the arid region. Any policy adapted to its dominating features must centre around this water supply. It practically does do this, whatever the law may declare to the contrary.

Along the infrequent streams of this section, it will prove true

that the valley lands, if the water of such streams be utilized for industry, by proper public regulations as to withdrawal and distribution, and by means of the necessary storage reservoirs, dams, weirs, and ditches, main and lateral, could be made valuable in parcels of much less than 160 acres in extent. In the colony enterprises of Southern California, now so rapidly forming and making the "desert bloom and blossom" like a rose, the majority of the new farms are much less than 100 acres in extent. Many of them even do not exceed 20 or 30 acres. But nothing of the sort could have been achieved under the present land laws of the United States. It has been possible only because in California the Mexican land grant system has prevailed, enabling capitalists or colony enterprises to obtain control of land areas sufficient in extent to warrant them in expending large sums of money for the construction of irrigation works, wells, storage reservoirs, and distributing ditches. In several instances the cost of these works have exceeded a million dollars. The squatter farmers could never have combined to achieve such great enterprises. The evidence of this last fact is to be seen on all sides in New Mexico. Yet Mr. Julian talks of stopping the stream of travel on its way to the Pacific Coast, and by means of homestead settlement people that territory with prosperous agriculturists. The Surveyor-General only talks of his ignorance and not from his knowledge. If the scant valley areas are dependent for their utilization entirely upon the proper distribution of water, of how much more importance becomes the water sources and supplies, by which the vast inter-plateau portion of our mountain system can alone be made available for pastoral purposes, or in a less degree for mining also?

I challenge those who persist in claiming that what is now known as the arid region will sooner or later become productive by the natural rain-fall to show me a single instance anywhere on the surface of the earth where such a result has been attained. New Mexico, parts of Arizona, and nearly all of the Republic of Mexico have been under cultivation for three hundred and fifty years, Peru and Chili quite as long, and Central Asia for unknown thousands of years. What climatic changes have occurred? Are not the irrigating canals required now as much as in the centuries gone by? There has been no such climatic change on this or any other continent.

The experiences of the countries wherein artificial distribution

of water has been necessary for cultivation, especially on this continent, have compelled a different system of water conservation and land distribution than has existed in more favored regions. This is a fact that we have been, and are still slow, to apprehend. But we must do so if we are ever to utilize the region under consideration. Mexico makes, for example, the water supply the centre of her land laws. Access to public streams or supplies must not be obstructed. If, to reach such water, private property has to be used, proper compensation is provided. Springs, etc., situated on private lands, but needed for neighborhood use, are subject to such "servitudes," the owners having exclusive use for at least sixty hours per week. The grazing lands are usually leased or granted in blocks of not less than eleven leagues, about 4,500 acres each, experience having demonstrated that within the Sierra Madre plateau region such blocks are accessible, as a rule, to water sufficient for the cattle that may be grazed thereon. It is very evident to my mind, then, that the great area lying beyond the one hundred and second meridian, and comprising the larger portion of our remaining public domain, must be placed under legal conditions widely different from those now existing.

The first condition must be the conservation of the water supplies, under National and State authority.

The second must be some method of encouraging or providing for the construction and maintenance, as required by the growth of population, of needed irrigation works, both for storage and distribution. These works should be paid for by those who will receive benefit from them. Some system of encouragement to capital, therefore, under proper engineering requirements, must be introduced.

The third step will be the sale or leasing, in suitable blocks, of the lands which no irrigation can ever make useful for any purpose other than the raising and feeding of cattle. This disposal of such lands must be controlled by the water supply alone, and not by any cut-and-dried mode of distribution, as at present.

I have thus attempted only to indicate the controlling conditions, not to lay down rules or perfect a system. Such things may as well be left to the Bourbons of the Julian order, who are so truly believed to neither learn nor unlearn. "Wise in their own conceit," they may be left to the enjoyment their vanity brings them.

Practical men of affairs look at things as they find them. Certainly no such conditions can be found in New Mexico, as the writer whom I have reviewed herein assumes to exist there. I have pointed out on the other hand the facts that are found, and the larger conditions that dominate the arid region. The subject may be left by me at this point, confident as I am that my view is fortified by observation and possesses the saving quality of common-sense.

STEPHEN W. DORSEY.